REMARKS

Claims 124-129 are pending in this application. The claims are not amended; however, applicants herewith provide a clean set of the pending claims for the convenience of the examiner. The Office Action is discussed below:

Response to Arguments and Anticipation Rejection:

On pages 2-4 of the office action, the examiner maintains the anticipation rejection and alleges that claims 127-129 do not specify the order of process of irradiating and heating steps. The examiner asserts that the letters "a", "b" and "c" clarify three different steps but do not require any specific order in which the steps are carried out. The examiner also asserts that claim 127 recites "b) irradiating the perform; and c) heating the preform..." but does not specify whether one step precedes the other. According to the examiner, claims 124-129, when interpreted as claiming melting before irradiation are entitled to a filing date of February 13, 1996 and when interpreted as claiming irradiation before melting are entitled to a filing date of October 2, 1996. Accordingly, the examiner maintains the rejection of claims over Hyon *et al.* Applicants disagree with the examiner and reiterate that Hyon has a section 102(e) date of May 6, 1996, which is after the earliest filing date of the instant application. Applicants submit that the instant application claims priority to U.S. Application Serial No. 08/726,313 (filed October 2, 1996), which was filed as a continuation-in-part of U.S. Application Serial No. 08/600,744 (filed February 13, 1996). Therefore, the Hyon patent, having May 6, 1996 as the 102(e) priority date, does not qualify as prior art under 35 U.S.C. § 102(e), because instant application's initial filing date antedates Hyon's filing date.

Applicants point out that claims 124 and 127 were added to encompass the recited subject matter of claims 1 and 25, respectively, of the U. S. Patent No. 6,316,158 (the '158 patent) in order to provoke an interference. There was no requirement in the '158 patent to specify the order in which the heating and irradiation steps take place. Accordingly, there should be no such requirement for the instant

claims.

Applicants also point out that claims 127-129 clearly recite processes for preparing an orthopaedic implant prosthesis and clarify that the claimed process, which is a continuous process, that the thermal treatment continued through the irradiation process of cross-linking, including before and after each dose of irradiation (see specification Example 6 on pages 44-46, for example (which is entitled to a filing date of February 13, 1996); also see below for additional clarifications and evidences). Therefore, Hyon is not a prior art to the claimed invention.

Applicants further clarify that the originally filed specification (as filed on February 13, 1996) has support for a method of crosslinking by irradiation and heating after irradiation. Applicants refer that the specification discloses, for example, a total dose of 5-20 Mrad at a dose rate of 2.5 Mrad per pass and it takes at least two passes of irradiation while the polymer is thermally treated after each dose of irradiation (see for example, Example 9 at pages 48-49). This is further evidenced by the fact that the van de Graaff generator used at the time generated a dose rate of 2.5 Mrad per pass. Therefore, the polymer according to the claimed invention is produced by cross-linking and heating before and after each irradiation dose.

Regarding the evidence in the Declaration of Merrill *et al.*, filed June 8, 2007 under Rule 1.131, the examiner agreed (see Office Action of September 7, 2007, page 2) that the evidence presented shows reduction to practice of the instantly claimed methods before January 20, 1995, wherein the polyethylene is first melted and then irradiated (see the Declaration of Merrill *et al.,* sections 10-11 and item b of Exhibit 1, for example). Hence, a method that involves irradiation is followed by subsequent melting to treat a polyethylene preform was reduced to practice before January 20, 1995. Accordingly, Hyon is not a prior art to the claimed invention.

Furthermore, applicants refer to the above discussion that a patent applicant need not show completion of every embodiment of an invention in a Rule 1.131

declaration*. The declaration of Merrill *et al.*, filed June 8, 2007, contains data showing the completion the completion of the claimed invention prior to January 20, 1995. However, the examiner has not addressed declaration that provided evidences of the completion of the claimed invention (including irradiation before melting) prior to January 20, 1995.

In view of the above, Hyon *et al.* patent is not a prior art to the claimed invention. Applicants reiterate that the Hyon *et al.* patent, however, is Section 102(e) prior art against the '158 patent.

On page two of the Office Action, the examiner has kept the previous citation of Dijkstra *et al.*, however, did not provide any response to the arguments submitted on October 26, 2007. Accordingly, applicants consider the rejection based on Dijkstra *et al.* has been withdrawn.

Double Patenting Rejection:

On pages 4-6 of the office action, the examiner maintains the provisional rejection of the claims 124-127 under the judicially created doctrine of obviousness-type double patenting and alleges as being unpatentable over claims 124-129, 131-134, and claims 124-125, 130, 143-146 of co-pending application serial nos. 10/197,209 and 09/764,445, respectively. In response, applicants reiterate, because applicants have not received any notice of allowance for the '209 or the '445 applications, the merits of this provisional rejection need not be discussed by at this time. *See* MPEP § 822.01 (Rev. 5, August 2006).

* As explained by the Court of Customs and Patent Appeals in *In re Fong*, 288 F.2d 932, 936 (CCPA 1961), a 131 declaration is sufficient if it shows a species of an invention.

REQUEST

Applicants submit that claims 124-129 are in condition for allowance, and respectfully request favorable consideration to that effect so that an interference can be declared with applicants as the senior party by virtue of the priority afforded by the priority applications. The examiner is invited to contact the undersigned at (202) 416-6800 should there be any questions.

Respectfully submitted,

May 14, 2008
Date

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